

Duff on Hospitality Law

Public Accommodations Round-Up: 2012 to Date

By Michael Brunet on 7.18.12 | Posted in Employment Law

It has been a busy year thus far for public accommodations issues under the Americans with Disabilities Act (ADA). In this week's post, [Mike Brunet](#), a member of our [Hospitality, Travel & Tourism](#) team, rounds up past issues, discusses a new public accommodations ruling that could affect your business, and speculates as to where public accommodations issues might go in the next year, informed by his attendance at the recent 2012 [National ADA Symposium](#).

March 15, 2012: ADA revisions become effective.

As detailed in a [prior 2012 post](#), the first significant revisions to public accommodations regulations in almost 20 years became effective March 15, 2012. These revisions are far-ranging, potentially requiring changes to existing and planned features in any place of public accommodation, including hospitality properties and restaurants.

April-May, 2012: The battle over swimming pool accessibility heats up.

Also discussed in two posts previously this year ([here](#) and [here](#)), was a battle between the U.S. Department of Justice (DOJ), which enforces ADA regulations, and hospitality owners and trade associations over swimming pool accessibility. DOJ interpreted the new ADA regulations to require fixed (as opposed to portable) swimming pool lifts that could not be shared between pools, while hoteliers raised safety, financial and availability reasons why the DOJ's interpretation was incorrect. DOJ extended the date to comply with its interpretation until January 13, 2013, and legislation has been introduced in Congress to clarify what is required to comply with swimming pool access regulations.

June 2012: Netflix and accessibility on the internet.

In June 2011, the National Association of the Deaf, the Western Massachusetts Association of the Deaf, and a deaf Massachusetts resident, Lee Nettles, filed a lawsuit against popular home-entertainment company Netflix, alleging that Netflix violated the public accommodations requirements under the ADA by failing to ensure that titles available for streaming-on-demand included closed-captioning, among other complaints. Netflix sought to have the lawsuit dismissed on a number of grounds, including that its web site is not a "place of public accommodation" under the ADA, and thus does not have to comply with ADA rules.

A federal District Court in Massachusetts denied Netflix's request, and in doing so ruled that web sites like Netflix's, which invite business from the public, are "places of public accommodation" subject to the ADA. Specifically, the court found that Netflix's site was a "service establishment," "place of exhibition or entertainment," or a "rental establishment," all of which are defined as places of public accommodation under the ADA. It also rejected Netflix's argument that a web site accessed in a private home, rather than in a public place, is not a "place of public accommodation," stating "while the home is not itself a place of public accommodation, entities that provide services in the home may qualify as places of public accommodation."

The impact of this decision is, as of yet, unknown. The court that made the decision is a trial level court, rather than a regional Court of Appeals, and therefore its decision does not require other courts, including even courts in Massachusetts, to reach the same conclusion regarding websites and ADA compliance. However, there are signs that website accessibility will become explicitly required in the near future: as discussed in my [ADA revisions presentation](#) in a prior post, DOJ previously proposed regulations on this very issue (currently delayed until December 2012). Additionally, as discussed in the same presentation, the new 2012 regulations include reservation accessibility requirements that apply to online reservations for hospitality properties. So while it may be too early to say that you are required to revamp your business's website to assure accessibility, it's something that should be on your short list if you are planning a website overhaul in the near future.

2012 and beyond: Where might the ADA be going next?

I attended the National ADA Symposium in Indianapolis, Indiana from May 30 through June 1. The Symposium was particularly well-attended, perhaps due to the ADA revisions becoming effective earlier this year. The attendees were a varied group, including government representatives of all stripes, representatives of private businesses, attorneys, and people with disabilities seeking to better understand their rights under the ADA. Although all of the sessions were enlightening, one of the most interesting was a general update from the United States Access Board, a federal agency that works closely with DOJ to create ADA regulations. Often, the issues that the Access Board is considering become binding law under the ADA or other laws regulating accessibility. As a result, examining the issues being considered by the Access Board can provide a rough picture of the hot-button ADA issues of the future.

This year, the Access Board was engaged in rulemaking focused on outdoor developed areas, such as trails, picnic or camping areas, beach access routes, and viewing areas. Of particular interest to cruise operators, the Board is also in the process of examining rules governing access on passenger vessels. And, no surprise given the general population's growing dependence on mobile devices, the Board is considering rulemaking covering mobile phone apps, video-relay service communications on mobile phones (to allow deaf or hard-of-hearing people to communicate with hearing people through the phone), and the accessibility of point-of-sale applications. To be clear, the Access Board has not promulgated regulations on these

issues yet. However, their focus on these topics is an indicator that regulations may be forthcoming in the future. If and when they do, we will be sure to inform you and recommend actions in response.

If you have questions or would like additional information about this topic, please feel free to contact [me](#) or [Greg](#).

Tags: accessibility, ADA, Americans with Disabilities Act, DOJ, Lee Nettles, National ADA Symposium, National Association of the Deaf, Netflix, Pool Lift, reservation, website